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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 186.

FRANCISCO DE LA TORRE,
Petitioner,

v.

THE NATIONAL CITY BANK OF NEW YORK,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION.

EARLE T. FIDDLER,
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Opinion Below.

The opinion of the Circuit Court of Appeals (R. 41), reported in 110 F. (2d) 976, is correctly cited in the Brief in Support of Petition (p. 7).

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code.

Statement of the Case.

Appellant is a judgment debtor on an obligation which bound him "as a several maker, not as a surety", using the language of the Circuit Court on a previous appeal. *De la Torre* v. *National City Bank of New York*, 91 F. (2d) 399, 403. To collect the judgment, real properties were attached which Petitioner claims belong to the community existing between himself and his wife, and not to his separate estate. Petitioner claims that his original obligation which formed the basis of the judgment was in reality an accommodation for one of his relatives, Mercedes de la Torre; that the community received no benefit therefrom nor did his wife consent to his original obligation; that therefore the community property is not bound to satisfy the judgment. It was on this statement of facts that the case went to the Supreme Court of Puerto Rico and the Circuit Court of Appeals.

The District Court had held that the facts above stated were not sufficient to bar the judgment creditor from attaching and selling the real property of the community to satisfy the judgment. The decision of the District Court was affirmed by unanimous decision of the Supreme Court, upon consideration of a fifty-five page brief filed on behalf of De la Torre (R. 9). Petitioner then filed a lengthy petition for rehearing with an additional memorandum which appear in the record on this Appeal, occupying pages 17 to 31 thereof, but the Supreme Court, again, unanimously, in an opinion fully reviewing the law a second time, denied the reconsideration prayed for (R. 31). The Circuit Court of Appeals affirmed the judgment of the Supreme Court of Puerto Rico (R. 41).

Question to Be Decided.

The question to be decided by this court is not whether the community real property may be attached and sold to satisfy the judgment, but whether the long line of decisions

of this Court, holding that the Supreme Court of Puerto Rico should be sustained in decisions involving solely local matters unless clearly wrong, denies a right of appeal created by Section 228 of the Judicial Code adopted by Congress (28 U. S. C. A. 225). (See Petition 4-5.)

Summary of Argument.

I. The judgment of the Circuit Court does not have the effect of denying a right of appeal.

II. The decision of the Circuit Court of Appeals does not overrule any decisions of the Supreme Court of Puerto Rico.

III. No question of general public interest is involved which would warrant review by this Court.

ARGUMENT.

FIRST.

The judgment of the Circuit Court does not have the effect of denying a right of appeal.

The petition for writ of certiorari questions and asks this Court to reverse its decision in *Bonet* v. *The Texas Co. (P. R.) Inc.*, —— U. S. ——; 84 L. Ed. 292, on the ground that that decision renders ineffectual Sec. 228 of the Judicial Code (28 U. S. C. A. 225) authorizing appeals in cases wherein the value in controversy exceeds $5,000.00.

This is not a case which falls within the range of circumstances which might possibly warrant a further review of the subject. Something, perhaps, could be argued for the advisability of such a review under some circumstances, for example, where the Supreme Court had patently disre-

garded the express language of a statute, or where the Supreme Court, in construing a local statute derived from continental sources, refused to follow American jurisprudence clearly established at the time the local Legislature had adopted the statute.

This case, however, is different. It is a *classic example* of the early application of the rule that the Supreme Court of Puerto Rico must be sustained unless "clearly" wrong.

The Supreme Court was interpreting its *Civil Code* derived from Spanish Sources on a question involving properties of husband and wife under the community system which is entirely foreign to the system known to the Common Law.

It has not violated principles of the Civil Law System. The most that can be said for the position of the petitioners is that the Supreme Court, after a very thorough consideration of the controversy, decided to follow one of two highly controverted theories which, as stated by Mr. Justice Holmes in *Arnett* v. *Reade*, 220 U. S. 311, 319-20, "has fed the flame of juridical controversy for many years". See Opinion of the Circuit Court (R. 46).

This Court, in effect, is requested to reverse the Supreme Court of Puerto Rico on the theory that "the tendency of development in community property law has been in the direction of an increasing protection of the wife's interest" (Opinion of the Circuit Court of Appeals (R. 13)) which might or might not be a salutary tendency. The Supreme Court of Puerto Rico decided in favor of one line of reasoning rather than another and is amply supported by authority in so doing (*Cf. Holt* v. *Empey*, 32 Idaho 106 and other cases and authorities discussed in the opinion of the Circuit Court (R. 52).

The Circuit Court (R. 53) quite properly concluded:

> "As was said in *Córdova* v. *Folgueras*, 227 U. S. 375, 378: 'The construction adopted in Porto Rico at least does no violence to the words of the statute; it concerns local affairs under a system with which the court of the Island is called on constantly to deal,

> and we are not prepared, as against the weight properly attributed to the local decision, to say that it is wrong.' "

On the record it cannot be said that the decision of the Supreme Court of Puerto Rico is "wrong" at all, to say nothing of being "clearly wrong".

The right of appeal, therefore, has not been denied or prejudiced.

SECOND.

The decision of the Circuit Court of Appeals does not overrule any decisions of the Supreme Court of Puerto Rico.

No decision of the Supreme Court of Puerto Rico on the question before this Court which conflicts with the decision of the Supreme Court of Puerto Rico herein, has been cited, nor do we know of any such decision.

THIRD.

No question of general public interest is involved which would warrant review by this Court.

The question here litigated involves solely the question of property rights as between husband and wife.

Petitioner is asking this Court to reverse itself not only in holding (*Bonet* v. *The Texas Co. (P. R.) supra*) that a decision of the Supreme Court of Puerto Rico must be sustained unless "inescapably wrong", but also its holdings in earlier decisions that the Supreme Court of Puerto Rico must be sustained in matters involving its fundamental system of law derived from Civil Law sources, unless "clearly" wrong, *and in spite of the fact that the decision*

of the Supreme Court is amply supported by Spanish and American authorities. Regardless of any possible contention that the rule as stated in *Bonet* v. *The Texas Co. (P. R.)* should be subject to further review, on the theory that it goes too far in view of Section 228 of the Judicial Code, this is not a case in which the proposition contended for could be properly maintained, but a case which falls fully within the principles laid down in earlier undisputed cases.

CONCLUSION.

The decision of the Circuit Court of Appeals was in all respects correct and the Petition should be denied.

Respectfully submitted,

EARLE T. FIDDLER,
Attorney for Respondent.

San Juan, Puerto Rico,
August 1, 1940.